

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-88(SJ)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Wednesday, July 8, 2015
ADAMOU DJIBO,	:	
	:	
Defendant.	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE STERLING JOHNSON, JR.  
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by computerized stenography.  
Transcript produced by Computer-aided Transcription.

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1 COURTROOM DEPUTY: United States versus Djibo.

2 THE COURT: Note your appearances.

3 MS. KONIUSZY: Karen Koniuszy for the United States,  
4 joined by AUSA Jim McGovern.

5 MR. MC GOVERN: Good morning, Your Honor.

6 THE COURT: Mr. McGovern, long time no see.

7 MR. OHNUMA: Zachary Marulis Ohnuma, 260 Madison,  
8 for the defendant, who is next to me, as well as my law office  
9 intern for the summer, Kelvin Lynn.

10 THE COURT: You had another intern here, didn't you?

11 MR. OHNUMA: He is getting a lot of court this  
12 summer. He has been here three times.

13 THE COURT: He has to plead to the superseding?

14 MS. KONIUSZY: That is right.

15 MR. OHNUMA: He has to be arraigned.

16 THE COURT: He previously pled not guilty?

17 MR. OHNUMA: Yes.

18 THE COURT: Now, what is the next step, motions?

19 MS. KONIUSZY: Your Honor, you may remember we were  
20 here two weeks ago for status conference and asked for a trial  
21 date. The Court suggested a date in November and the  
22 defendant emphatically rejected that and asked for an  
23 expedited schedule. Your Honor set this for trial on  
24 July 13th. We are ready and prepared to go Monday.

25 THE COURT: The problem is, is this is a brand new

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1 indictment. Are you making motions? I think there was a  
2 motion to suppress.

3 MS. KONIUSZY: There is a motion to suppress, the  
4 Government is intending to file the response today, per the  
5 Court's schedule.

6 We don't believe there is any legal basis for  
7 suppression, even if the facts are exactly as they are alleged  
8 in the motion, the law still warrants denial of that.

9 So, we don't think that there is an issue with  
10 needing to have a hearing.

11 MR. OHNUMA: I can short circuit this a bit. I have  
12 spoken to my client now about the waiver of time and in light  
13 of the new discovery and the new indictment, we would like an  
14 adjournment of that Monday trial date. So something like  
15 thirty to sixty days would be fine. He is willing to waive  
16 that time.

17 We filed the motions already. I don't --

18 THE COURT: Well, you filed the motion to the last  
19 indictment. You have not filed a motion for this indictment.

20 MR. OHNUMA: That's correct.

21 THE COURT: Do you intend to file motions for this  
22 indictment?

23 MR. OHNUMA: I don't see any that would be  
24 materially different. I have not reviewed the discovery I  
25 received yesterday so I can't be totally sure. As of now--

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1 THE COURT: What is different with the superseding?

2 MS. KONIUSZY: The only difference, we expanded the  
3 date range on the conspiracy charges, there are no additional  
4 charges, it is the same four counts in the original indictment  
5 are repeated in the superseding. Just the date range on the  
6 two conspiracy counts are expanded slightly.

7 THE COURT: So, basically what we have to deal with  
8 is the motion to suppress?

9 MR. OHNUMA: Yeah, I think so. That was his only  
10 interaction with law enforcement. They do appear in the new  
11 discovery, correct me if I am wrong, to be indications that  
12 there were other shipments of drugs over that longer time  
13 period that are part of the conspiracy.

14 THE COURT: How long would it take to do the hearing  
15 for the motions to suppress?

16 MS. KONIUSZY: Your Honor, we would be happy to do  
17 it Monday after jury selection. They will be the same  
18 witnesses for the suppression hearing as we would call in for  
19 the trial. We don't see a need to bring them in two days. We  
20 are happy to proceed. The suppression hearing shouldn't take  
21 more than an hour or two.

22 MR. OHNUMA: We are asking for an adjournment of the  
23 Monday trial date.

24 So, we can do the hearing on Monday. We are ready  
25 to go ahead with that. We are going to need more time for the

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1 trial based on the new discovery and the new indictment.

2 THE COURT: What is the new discovery?

3 MR. OHNUMA: Several thousand pages. Mr. Lynn  
4 stared looking at it. There are some bank records, indication  
5 of another shipment via-- two lab reports, one from the city  
6 police from 2013 and one from the DEA.

7 There is other items that were seized from Mr. Djibo  
8 that I hadn't seen before. There are a few other things, I  
9 don't remember. I only got it yesterday.

10 THE COURT: I will give you a short adjournment, but  
11 I want to get rid of this case, by resolution or a trial.

12 We can have the hearing on the motion to suppress,  
13 when is it, Monday?

14 Can we do it Monday?

15 MR. OHNUMA: Yes, that is fine.

16 MS. KONIUSZY: Yes.

17 THE COURT: That is only about an hour.

18 MS. KONIUSZY: Yes, Your Honor, we do intend to file  
19 opposition briefing. I don't know if Your Honor needs longer  
20 to consider the legal issues. We might be able to do away  
21 with the hearing altogether.

22 THE COURT: When can you file your opposition papers?

23 MS. KONIUSZY: Today.

24 THE COURT: Today is Wednesday.

25 File them today, I will look at them tomorrow, we

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1 will have the hearing Monday.

2 MS. KONIUSZY: That works great, Your Honor.

3 THE COURT: All right.

4 MS. KONIUSZY: Then are we adjourning the trial date  
5 or proceeding immediately after?

6 THE COURT: We will keep the trial date just in  
7 case. I will see what the hearing says.

8 MR. OHNUMA: Just in terms of-- I am not going to be  
9 ready for trial on Monday based on the new discovery. I will  
10 be ready for the hearing, but I--

11 THE COURT: We are going to do the hearing. We will  
12 still keep the trial date.

13 MR. OHNUMA: As a holding date.

14 THE COURT: Yes.

15 MR. OHNUMA: Then we will set it. I will request  
16 the adjournment then.

17 THE COURT: We probably will have to adjourn the  
18 trial.

19 MS. KONIUSZY: Your Honor, the only thing, we have  
20 to provide travel for a number of witnesses around the  
21 country. I need to book their tickets. So if we are going to  
22 adjourn the date, I will not buy flights for Monday.

23 MR. OHNUMA: That is my application. I think we can  
24 set a date, like a September date now, that would make sense.

25 I don't think that the hearing is going to-- there

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1 is other evidence I'm afraid against my client.

2 THE COURT: I wouldn't be here in August.

3 MS. KONIUSZY: That is fine with me, Your Honor.

4 Originally the Court suggested a November date based  
5 on the Court's calendar.

6 THE COURT: Give them a date.

7 COURTROOM DEPUTY: November 2nd.

8 MS. KONIUSZY: That is fine with the Government.

9 COURTROOM DEPUTY: Jury selection and trial at 9:30.

10 MR. OHNUMA: Yes, the defendant agrees to waive time  
11 until November 2nd based on the new discovery.

12 THE COURT: All right.

13 MR. OHNUMA: And the need to get ready.

14 COURTROOM DEPUTY: The hearing on Monday at 9:30, a  
15 motion hearing.

16 THE COURT: I will see you in a second.

17 MR. OHNUMA: I do have a couple of other applications.

18 THE COURT: I know you do.

19 MR. OHNUMA: So, first of all, there was alluded to  
20 in the new discovery, an expert in the very very cryptic sort  
21 of topic areas that the expert will talk about, about drugs  
22 coming from Africa. I would ask for a deadline for a full  
23 expert report to be served.

24 THE COURT: An expert?

25 MS. KONIUSZY: Your Honor, we do anticipate calling

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1 an expert at the trial for issues such as possession and  
2 distribution quantities and wholesale and retail value of the  
3 drugs seized. Those are typical issues that are presented  
4 through expert testimony. And, issues that are germane to the  
5 charges.

6 THE COURT: But --

7 MS. KONIUSZY: We don't typically provide a separate  
8 expert report for those issues.

9 MR. OHNUMA: The rules require that, Your Honor,  
10 Rule 16.

11 MS. KONIUSZY: No, they don't. They require notice  
12 that we are providing an expert and the topics.

13 THE COURT: I recall they have to give you notice.

14 MR. OHNUMA: The substance of the expert's  
15 testimony, which she hasn't done. She has not-- she hasn't  
16 given me something that I can respond to. I may have my own  
17 expert if I know what her expert will say.

18 The notice went beyond that and talked about drug  
19 routes in Africa. I don't know anything about it. They have  
20 to give me the substance of what they will say, not just the  
21 topic area, that is Rule 16.

22 THE COURT: They have sometime before the trial, the  
23 trial will be in November. They will comply with the statute.

24 MR. OHNUMA: So I was going to ask for a deadline  
25 for that, so I will have sufficient time to respond if



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1 necessary.

2 MS. KONIUSZY: Your Honor, if the defendant wants to  
3 move to strike or file a motion in limine on certain topics,  
4 he is certainly within his rights to do that. But to impose  
5 additional burdens on the Government to review expert  
6 testimony.

7 THE COURT: The Government is right, you want an  
8 expert?

9 MR. OHNUMA: Well, I don't know what I am answering,  
10 I need the expert report under Rule 16 which tells me the  
11 substance of what they will say.

12 THE COURT: They will give it to you sometime in  
13 September.

14 MR. OHNUMA: Sometime in September sounds good.

15 THE COURT: Okay.

16 Anything else?

17 MR. OHNUMA: Yes, Your Honor.

18 So, an issue has arisen, I guess agents approached a  
19 relative of Mr. Djibo, Sewa Koudossou(phonetic), who is here  
20 in court today. He indicated to me he wanted a lawyer and  
21 didn't want to talk to them again. I communicated that to Ms.  
22 Koniuszy. She said I don't represent him.

23 My application now would be if he is here to confirm  
24 it. He also indicated to me, he could not afford his own  
25 lawyer to ask a CJA lawyer to be --

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1 THE COURT: Represent him for what?

2 MR. OHNUMA: For anything that the Government might  
3 need to speak to him about or that we might need to speak to  
4 him about.

5 THE COURT: Do you want to address that?

6 MS. KONIUSZY: Your Honor, first of all, either side  
7 is permitted to talk to any witnesses they want.

8 THE COURT: Correct.

9 MS. KONIUSZY: The idea that defense counsel is  
10 attempting to restrict the witnesses that the Government can  
11 speak with, is quite ridiculous.

12 MR. OHNUMA: I'm not attempting to do that.

13 THE COURT: Just a second, let her finish.

14 MS. KONIUSZY: I also note that Mr. Marulis does not  
15 represent any other witness other than the defendant and is in  
16 fact conflicted out of doing so. The extent to-- give those  
17 witnesses legal advice, instruct them not to speak to the  
18 Government, or otherwise obstruct the process of interviewing,  
19 an investigation, we take exception with that as well.

20 MR. OHNUMA: Your Honor, I have not obstructed  
21 anything. I have not advised anyone not to speak to anyone.  
22 I have no problem with him speaking to the Government. He  
23 told me that he didn't want Government agents marching around  
24 his house which is what happened Monday. I told her that.  
25 She has responded by it sounds like accusing me of -- the

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1 obstruction statutes are very broad. I'm very aware of that  
2 and I'm not doing that.

3 What I'm asking for, is that he get CJA  
4 representation to facilitate that. So no one can further  
5 accuse me.

6 THE COURT: Let him get his own lawyer, I'm not  
7 going to appoint anyone.

8 MR. OHNUMA: He indicated to me he can't afford one.

9 THE COURT: Then he can speak to the agents or he  
10 doesn't have to speak to the agents.

11 Anything else?

12 MR. OHNUMA: Yes. If I may have a moment.

13 I do have-- I would like to be heard ex parte on  
14 another issue relating to CJA recourses.

15 THE COURT: Okay.

16 MS. KONIUSZY: Your Honor, can we have a proffer at  
17 least as to what the issue is.

18 THE COURT: I know what the issue is.

19 So, you are going to do it sidebar?

20 MR. OHNUMA: I would like to be on the record.

21 THE COURT: Pardon me?

22 MR. OHNUMA: I would like it on the record.

23 THE COURT: It will be on the record.

24 (Sidebar without prosecutor present.)

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11 (Following took place in open Court.)

12 THE COURT: Do we have a date, Monday is for the  
13 hearing?

14 COURTROOM DEPUTY: Yes and November 2nd for jury  
15 selection and trial.

16 MR. OHNUMA: Can I just ask the Government when they  
17 will be turning over the 3500 material for the hearing?

18 THE COURT: You are not entitled to it until after  
19 the witness testifies. But they usually give it to you before  
20 the trial.

21 When do you think you will turn it over?

22 MS. KONIUSZY: Initial matter, I don't think it is  
23 set we are even having a hearing. We would like to see the  
24 Court's opinion on the briefing first.

25 If there is a hearing, we do turn over 3500 material

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1 in advance. So it would be usually a day or two.

2 MR. OHNUMA: A day or two, would be tomorrow or  
3 Friday.

4 MS. KONIUSZY: It will be Sunday.

5 MR. OHNUMA: Okay.

6 THE COURT: You will turn it over prior to the  
7 hearing?

8 MS. KONIUSZY: We will turn it over prior to the  
9 hearing, yes, Judge.

10 MR. OHNUMA: Very good, thank you.

11 COURTROOM DEPUTY: To be clear, the speedy trial  
12 time is excluded until November.

13 THE COURT: Yes. In fact he has waived speedy trial  
14 time anyway.

15 Anything else?

16 MR. OHNUMA: Nothing from the defendant, Your Honor,  
17 thank you.

18 MS. KONIUSZY: Nothing further, Your Honor, thank you.

19 (Matter adjourned.)

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21 I CERTIFY that the foregoing  
22 is a correct transcript from  
the record of proceedings  
in the above entitled matter.

23 s/Richard W. Barry

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Richard W. Barry, RPR

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